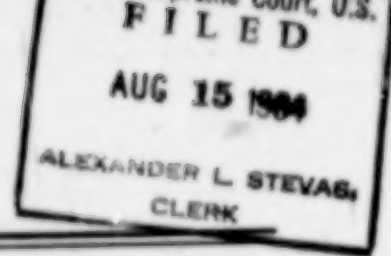


(2)
No. 83-1894



In the Supreme Court of the United States

OCTOBER TERM, 1984

PATTERN MAKERS' LEAGUE OF NORTH AMERICA,
AFL-CIO, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR
RELATIONS BOARD

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MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

1. The Board found, *inter alia*, that petitioner (the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. 158(b)(1)(A), by fining union members who had resigned from the union and then returned to work during the course of a strike, in violation of a union constitutional provision prohibiting resignations during a strike or lockout or when one appears imminent (Pet. App. 13a). In so finding, the Board relied on its decision in *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 263 N.L.R.B. 984, 986 (1982), enforcement denied, 725 F.2d 1212 (9th Cir. 1984), in which the Board held that "a union rule which limits the

right of a union member to resign only to nonstrike periods constitutes an unreasonable restriction on a member's Section 7 right to resign."¹

2. The court of appeals upheld the Board's decision (Pet. App. 8a). The court stated (Pet. App. 5a-6a (citations omitted)):

The Section 7 right to refrain from union activities encompasses the right of members to resign from the union. We think that because [the Union's constitutional provision] completely suspends an employee's right to choose not to be a union member and thus no longer subject to union discipline, it frustrates the overriding policy of labor law that employees be free to choose whether to engage in concerted activities.

The court added that while a union had the right to enforce its members' compliance with its rules, that power did not extend to employees' post-resignation activities or to forbidding members from resigning (Pet. App. 7a).

3. The court of appeals correctly held that the Union's restriction on resignation impermissibly trenches on the Section 7 right of employees to refrain from engaging in union activities. However, the decision of the court of appeals is in direct conflict with the decision of the Ninth Circuit in *Dalmo Victor* (725 F.2d 1212 (1984)), which held that a restriction on resignation during a strike is a

¹The Board there expressed the view that a rule restricting a member's right to resign for a period not to exceed 30 days after tender would be enforceable (263 N.L.R.B. at 987). Chairman Van de Water and Member Hunter, concurring, were of the view that any restriction on the right to resign was contrary to the Act (*id.* at 987-988). In *International Association of Machinists, Local Lodge 1414 (Neufeld Porsche-Audi)*, 270 N.L.R.B. No. 209 (June 22, 1984), the Board adopted the view of the concurrence in *Dalmo Victor* that the Act permits no restriction on the right to resign.

reasonable union rule protected by the proviso to Section 8(b)(1)(A) of the Act.² The issue is a recurrent one in the administration of the Act. It is important that this Court resolve the conflict among the circuits to eliminate the uncertainty that now exists regarding the right of employees across the nation to resign from a union in order to return to work for a struck employer.³

For these reasons, the Board does not oppose the granting of the present petition.

Respectfully submitted.

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²That proviso permits a union to "prescribe its own rules with respect to the acquisition or retention of [union] membership" (29 U.S.C. 158(b)(1)(A)).

³The Ninth Circuit denied the Board's petition for rehearing and suggestion of rehearing en banc in *Dalmo Victor* on July 10, 1984. We intend to file a petition for a writ of certiorari in that case.